

City of Waukesha, Wisconsin

Ordinance No. _____-16

**An Ordinance Repealing and Re-Creating Section 6.17 of the Waukesha Municipal Code,
Regarding Closures of Public Rights of Way**

The Common Council of the City of Waukesha do ordain as follows:

Section 1. Section 6.17 of the Waukesha Municipal Code is repealed and recreated to read in its entirety as follows:

6.17 Closures of Public Rights of Way

(1) Definitions. In this Section, the following terms have these meanings:

- (a)** Applicant means an owner or tenant of a parcel of real property adjacent to a Public Right of Way; the City or City departments; or educational institutions located within the City of Waukesha; who submit an application under this Section. Other individuals and entities that are not listed above may be Applicants if they obtain the approval of the Common Council member representing the district in which the Closure is desired, or the Common Council president if that Common Council member is unavailable, and the Common Council Member or President signs the application with the Applicant. Common Council members are not required to approve such applications, and may refuse to do so.
- (b)** Arterial means a Public Right of Way that is designated as an Arterial by the Fire Department, Police Department and Public Works Department, as a main route for emergency vehicles across the City.
- (c)** Block means the distance between intersections on a City street, or 200 yards, whichever is shorter.
- (d)** Closure means the partial or complete barricading or occupation of specified areas of Public Rights of Way, or the placement of immobile or stationary physical objects in a Public Right of Way, such that it is not available for its normal use for vehicle traffic. Closures for which a permit is required do not include:
 - (i)** Closures of only pedestrian crossings of Public Rights of Way, provided the Closures occur only as needed for persons to cross the Public Right of Way, and traffic can pass at other times.

- (ii) Closures of only recreation trail crossings of Public Rights of Way, provided the Closures occur only as needed for persons to cross the Public Right of Way, and traffic can pass at other times.
 - (iii) Closures of Public Rights of Way by the City for normal, usual, and customary City purposes; for example, maintenance, repair and construction.
- (e) Partial Closure means a closure of a Public Right of Way that still allows vehicle traffic to pass; for example, the closure of only a parking lane, or the closure of only one driving lane where there are multiple driving lanes in that direction.
- (f) Permitted Closure means a Closure for any of the following reasons, and do require a permit under this Section:
- (i) Parades and Demonstrations, as defined in Municipal Code §6.16.
 - (ii) Special Events, as defined in Municipal Code §6.18.
 - (iii) Uses by educational institutions located within the City of Waukesha.
 - (iv) Special activities conducted by the City, which are not normal, usual, and customary uses of Public Right of Way, for example, runs, walks, and other community activities.
- (g) Public Right of Way means all public rights of way identified by the Department of Public Works as such, and includes for purposes of this Section public streets, sidewalks, parking lots, and similar City vehicle ways over which the public has a right to travel. For purposes of this Section, Public Right of Way does not include recreational trails and paths designated for pedestrian and bicycle use only.
- (h) Section means this Municipal Code §6.17.
- (i) Street Uses Panel means an *ad hoc* panel consisting of the City Administrator, the Common Council President, and the alderman of the district in which the Closure will take place. If the Common Council President is the alderman of that district, then an alderman from an adjacent district shall be designated by the Mayor and be included in the panel.
- (2) **Purpose and Applicability.** Public Rights of Way are held by the City in trust for the public. The City has a duty to maintain Public Rights of Way for their intended purposes as ways for vehicle and pedestrian traffic. However, the City may authorize the temporary Closure of Public Rights of Way, subject to reasonable regulation and control. The purpose of this Section is to provide for certain Permitted Closures of Public Rights of Way, and the regulation of activities within closed Public Rights of Way for the safety and well-being of participants and the public. Closure of Public Rights of Way is not a right of citizens, and the City may refuse to issue a permit, revoke an issued permit, or otherwise pre-empt the rights of any other party to close or use any Public Right of Way, for reasons of public purpose. The City may close streets at any time in its sole discretion for its normal, usual and customary purposes and uses without complying with this Section. Closure of Public

Rights of Way pursuant to this Section is not required for Parades and Demonstrations taking place under Municipal Code §6.16, however, if the organizers of a Parade or Demonstration desire a Closure of a Public Right of Way more than one hour in advance of the Parade or Demonstration, or if stationary and immobile objects will be placed on Public Right of Way in connection with the Parade or Demonstration, then the requirements of this Section must be met. This Section does not apply to block parties under Municipal Code §6.185, street excavations under Municipal Code §6.03, storage of construction materials and equipment under Municipal Code §6.14, or closures of Public Rights of Way within properties under the jurisdiction of the Department of Parks, Recreation and Forestry.

(3) General Rules.

- (a) No Closure of a Public Right of Way shall take place unless a permit is first issued under this Section or the closure is authorized by other applicable law.
- (b) Permits shall be issued only to Applicants, as defined in subsection (1)(a).
- (c) Permits shall be issued only for Permitted Closures, as defined in subsection (1)(f). If permits required for the events associated with the Permitted Closures are not obtained by Applicants, then the Closure application may be denied or already-granted permits may be revoked.
- (d) Permits for Closures are not exclusive, and all closed Public Rights of Way shall remain open to the public, except as necessary to allow the conduct of permitted activities within the Closure.

(4) Application for Permit. Applications shall be made on forms provided by, and shall be submitted to, the City Clerk. Only one application shall be submitted per requested Closure, and multiple closure areas may be requested on the single application. The application shall contain at least the following information:

- (a) The names, addresses and telephone numbers of the Applicant requesting the Closure, and the signature of the Common Council member, if required by subsection (1)(a).
- (b) The date, time and duration of the requested Closure.
- (c) The location or locations of the requested Closure.
- (d) The purpose of the Closure, with a detailed description of the event for which the Closure is requested, including the expected number of participants and attendees, and whether the activities will involve vehicles or animals.
- (e) Any other information reasonably requested on the application form.

(5) Time for Filing of Applications. Applications for Closures shall be filed no earlier than 270 days before the date of the planned Closure, and no later than 30 days before the date of the planned Closure. Applications may not be amended after filing, except as requested by, and specifically approved by, the City. Applications will be processed in the order in which they are received.

- (6) **Fees.** The Fee for filing an application shall be \$50 for Closure of one to seven blocks, and \$150 for Closure of eight or more blocks. An additional \$50 fee will be charged for Applications received 45 or fewer days in advance of the requested Closure. In the B-2 zone, Central Business District, a single application may be made and a single permit may be granted for closures of the same area on multiple dates, with only a single fee paid. In all other zones, fees shall be payable per day of Closure. Fees shall be paid at the time of filing of applications, and shall not be refundable. Fees for Partial Closures shall be one-half of the fees for complete Closures. There shall be no fee for Closures by the City under subsection (1)(f)(iv).
- (7) **Distribution of Application, Recommendations of Departments.** Copies of Applications submitted to the City pursuant to subsection (4) shall immediately be distributed to the Police Department, the Fire Department, the Department of Public Works, the Department of Parks, Recreation and Forestry, Waukesha Metro Transit, the Buildings and Grounds Committee (if the application is for Closure of a parking lot), and the City Attorney; and the departments and committee shall respond within the applicable time period in subsection (13) in writing to the City Clerk and the City Attorney, indicating their approval of the Application or their bases for denial as listed in subsection (8). Recommendations for denial shall describe the bases for denial in reasonable detail, and shall describe possible alternatives or conditions which, if adopted by the Applicant, would remove the bases for denial.
- (8) **Standards for Department Recommendations.** Departments to which the Application is distributed may recommend denial for the following reasons:
- (a) In the determination of the Police Department, at the time and place of the Closure indicated in the application there will not be a sufficient number of officers available to control traffic and provide security and protection for persons in and near the Closure, considering the nature of the activities to be held within the Closure area and other demands for police protection at the proposed time and location of the Closure.
 - (b) In the determination of the Buildings and Grounds Committee, Police Department, Fire Department, Department of Public Works, Department of Parks, Recreation and Forestry, or Waukesha Metro Transit, the size, place or time of the Closure indicated in the application will substantially and unnecessarily interfere with traffic in the area of the Closure or will substantially and unnecessarily interfere with City-conducted activities, and there are no reasonable alternatives or conditions that could be placed on the Closure to mitigate the interference.
 - (c) In the determination of the Fire Department, the Closure, as described in the application, would substantially and unnecessarily interfere with adequate fire or ambulance service in the area of the City near the Closure.
 - (d) In the determination of the Department of Public Works, the area for which a Closure application is made will be under construction or repair, or that the Closure will substantially and unnecessarily interfere with repairs, construction or other City work in areas near the Closure.

(e) Any other reason rationally related to an articulated, legitimate public purpose.

(9) Public Notice and Opportunity for Objection. Notice of the filing of applications shall be posted immediately upon their receipt on the City's web site and on the notices bulletin board at City Hall. Owners and tenants of properties adjacent to the Public Rights of Way proposed to be closed may file their written objections to the closure with the City Clerk within the applicable time period in subsection (13). If objection is made, then the objection shall be referred to the Street Uses Panel, which shall conduct an investigation and shall determine whether the closure would be an unreasonable interference with the rights of the objecting parties. If the Street Uses Panel finds that the closure would be an unreasonable interference, then it shall recommend conditions to the closure to mitigate the interference. The Street Uses Panel may only recommend denial of the application if it finds that there are no reasonable conditions which would sufficiently mitigate the interference. The Street Closure Panel shall make its recommendation to the City Clerk either to deny the application, approve the application, or approve the application with conditions, within the applicable time period in subsection (13).

(10) City Clerk Action. The City Clerk shall act upon applications within the applicable time period in subsection (13), as follows:

(a) The City Clerk shall deny the application if any of the following occur:

- (i) If the Application is incomplete or is not accompanied by the required fees.
- (ii) If the Application indicates that the Closure would be in violation of any part of subsection (11) of this Section.
- (iii) If the reason for the Closure is not a Permitted Closure.
- (iv) If there is a previously-issued permit for simultaneous closure of any of the Public Rights of Way that are the subject of the application.

(b) If the City Clerk does not deny the application under subsection (10)(a), then the City Clerk shall further act on the application as follows:

- (i) If any City department to which an application is distributed or the Street Uses Panel recommends denial of the application, then the City Clerk shall deny the application.
- (ii) If all City departments to which an application is distributed and the Street Uses Panel, if necessary, approve the application without conditions, then the City Clerk shall approve the application and issue the permit.
- (iii) If any City department to which an application is distributed or the Street Uses Panel recommends approval of the application with conditions, and no departments or the Street Uses Panel recommend denial of the application, then the City Clerk shall approve the application and issue the permit subject to the recommended conditions.

- (11) Notice of Action, Conditions and Alternatives.** The City Clerk shall notify Applicant in writing of the action taken on the application within the applicable time period in subsection (13). Notifications shall be delivered to Applicant by email at the email address shown on the application or by first-class US Mail to the address shown on the application. Denials of applications shall give the Applicant notice of the right to appeal under subsection (12) and explain the bases for denial in sufficient detail for the Applicant to evaluate possible revisions, alternatives or conditions that would address the bases for denial. Applicant shall be given the opportunity to revise the application to include such revisions, alternatives and conditions, and to re-submit the application. Denials of re-submitted applications shall be done similarly, and Applicants may revise and re-submit as many times as they wish to. The timetable for the application process shall be re-set upon the filing of re-submitted applications, and it is the Applicant's responsibility to submit the application long enough in advance of the requested Closure to allow for revisions and re-submissions, if they are necessary.
- (12) Appeal of Denial.** An Applicant may appeal a denial of an application by filing a written notice of appeal with the City Clerk, within the applicable time period in subsection (13), which shall be determined by the postmark, if notice is delivered by US Mail, or by the date of the email, if notice is delivered by email. If an appeal is not so filed within the stated time period, then the denial shall be final. The appeal shall be conducted by the Mayor or the Mayor's designee, who shall hold a hearing within the applicable time period in subsection (13), and either affirm or reverse the denial. The decision of the Mayor or the Mayor's designee shall be appealable to circuit court by certiorari. If an appeal hearing is not held by the Mayor or Mayor's designee within the applicable time period in subsection (13), then the Application shall be deemed approved, and a permit shall be issued.
- (13) Timetable for Application Process.** The schedule for the application review process shall be as follows, depending on whether the Application is filed more than 45 days in advance of the requested Closure or not:
- (a) Applications Filed More than 45 Days in Advance of the Requested Closure.**
- (i) Applications shall be distributed by the Clerk to departments, and post notice of the application to the City web site and bulleting board, no later than 3 days after receipt of the application.
 - (ii) Departments shall complete their review of applications, and provide their responses to the Clerk, no later than 14 days after receipt of the applications from the Clerk.
 - (iii) Public objections shall be filed no later than 14 days after notice of applications is posted to the City web site and bulletin board.
 - (iv) The Street Uses Panel shall hold its meeting and render its decision no later than 7 days after receipt of public objection.
 - (v) The Clerk shall act on the application, and give notice to the Applicant, no later than 24 days after receipt of the application.

- (vi) Appeals of the Clerk's action shall be filed no later than 3 days after the Clerk gives notice of action on the application to the Applicant.
- (vii) A hearing of the Applicant's appeal and a decision on the appeal shall be done no later than 7 days after the filing of an appeal by the Applicant.

(b) Applications Filed 45 Days or Fewer in Advance of the Requested Closure.

- (i) Applications shall be distributed by the Clerk to departments, and post notice of the application to the City web site and bulletin board, no later than 1 day after receipt of the application.
- (ii) Departments shall complete their review of applications, and provide their responses to the Clerk, no later than 7 days after receipt of the applications from the Clerk.
- (iii) Public objections shall be filed no later than 7 days after notice of applications is posted to the City web site and bulletin board.
- (iv) The Street Uses Panel shall hold its meeting and render its decision no later than 5 days after receipt of public objection.
- (v) The Clerk shall act on the application, and give notice to the Applicant, no later than 14 days after receipt of the application.
- (vi) Appeals of the Clerk's action shall be filed no later than 3 days after the Clerk gives notice of action on the application to the Applicant.
- (vii) A hearing of the Applicant's appeal and a decision on the appeal shall be done no later than 3 days before the date of the requested Closure.

(14) Additional Regulations. Closures of Public Rights of Way are subject to the following regulations:

- (a) Closures may not take place between the hours of 10:00 p.m. and 6:00 a.m.
- (b) Arterials shall not be closed, unless specifically approved by the Police Department, Fire Department and Public Works Department.
- (c) Closures are at all times subject to cancellation or modification due to emergencies, in the City's sole discretion.
- (d) A path of at least 15 feet in width, having no obstacles within it other than pedestrians, must be maintained through closed areas at all times, to allow for passage of emergency vehicles.
- (e) Closures, and all activities and participants within closed areas, are at all times subject to the direction and orders of police.
- (f) Organizers and participants shall comply with the direction of police officers controlling traffic and security.

(g) Closures may not take place, and shall be terminated if already underway, if an emergency requires that police officers required for traffic controlling and security respond and leave the site of the Closure, such that there remains inadequate traffic control or security, in the City's sole discretion.

(h) Permits may be revoked if the Applicant fails to comply with any conditions placed on the permit, the requirements of this Section, or any other applicable laws.

(15) Penalty. Any person violating any of the provisions of this Section or a permit issued hereunder shall be subject to forfeiture as provided by Municipal Code §25.05.

Section 2. All portions of the Municipal Code that are inconsistent with, or contravene the provisions of, this Ordinance are repealed.

Section 3. This Ordinance shall be effective immediately upon its publication.

Passed the _____ day of _____, 2016.

Shawn N. Reilly, Mayor

Attest: Gina L. Kozlik, City Clerk